Meeting Minutes
2001 Brownfields Advisory Group
Meeting #2, October 10, 2001

Advisory Group Members present:		Kathy Lucas, Mark Burcope, Matt Greller, Glenn Pratt, Senator Beverly Gard, Jeff Rea, Representative David Wolkins, Paul Freeman, Mike Pitts, Kyle Hendrix
Advisory Group Members absent:		Betsy DuSold, Carl Lile, Dhiann Kinsworthy, Jamie Palmer, Mary Mulligan, Mayor Bill Goffinet, Representative Bob Kuzman, Representative Jonathan Weinzapfel, Senator Vi Simpson, Vince Griffin
Staff present:	IDFA:	Courtney Tobin, Calvin Kelly, Sara Westrick
	IDEM:	Gabriele Hauer, Bruce Oertel, Michele Oertel, Anne Black, Steve Browning, Tom Baker, Tracy Concannon, Pat Colcord, Trevor Fuller
	IDOC:	Deanna Jeffrion

The meeting began at 10:00 with Advisory Group members, audience members, and staff introductions.

Introductory remarks from Courtney Tobin:

Ms. Tobin provided a summary of last meeting's important points:

1) One of the primary focuses during the development of this incentive has been on how to keep the new activities separate from ELF. If a site or project is eligible for ELF money, it will not be eligible for this new incentive.
2) Another focus of the new incentive will be on leveraging other resources. Staff will be looking for some type of leverage of funds and community involvement to qualify for this incentive. Staff would also like to adhere to some of the current Brownfields program criteria.
3) The end goal of projects funded under this incentive is a No Further Action letter and redevelopment at the site. If necessary or applicable, a site could go through the VRP although additional costs associated with the VRP would likely not be covered under the incentive.
4) Two types of funding alternatives for the new incentive were discussed at the first meeting. The majority of the $9mm could be used for grants to perform remediation activities on petroleum contaminated sites. The other type of funding discussed was a grant/loan combination. Concerns were raised concerning a project cost-cap and what to do in the instance of a cost overrun. Staff is also looking at a way to geographically disperse the funds to allow for the most flexibility.
5) Accountability issues were raised in the last meeting. Because this is the first state incentive providing grant money for clean up, there will be a higher expectation on the part of the State that full remediation

take place on the site. This will require a higher of commitment by all parties to a project.

6) Finally, staff will also be looking for a level of due diligence (Phase I and II information) at a site for communities to be eligible for the grant money.

ELF program overview from Steve Browning:

Because the origin of the new incentive is a transfer of funds from the ELF (Excess Liability Fund) Program to the Brownfields Fund, it was decided that an introduction to the ELF Program would be useful.

The ELF Program was created in the late 1980s as a mechanism to reimburse owners and operators of petroleum Underground Storage Tanks (USTs) for clean up. The funding in the ELF program comes from an annual tank fee of $90 per tank per year that owners and operators pay. In addition, a $0.008 per gallon fee on all petroleum and kerosene is sold in the state is collected. Combined, these represent revenue of close to $26mm annually. Last year was the first year that the ELF program paid out as much in claims as was collected in annual fees. (Handouts containing further details on the ELF Program were provided).

Other Comments and Concerns from Meeting #1:

Glenn Pratt reiterated his concern that there is a need, especially in smaller communities, for a dedicated staff person that could serve as an educator and a liason to communities. Staff responded that it would continue to look heavily to IACT and the Community Development and Business Development representatives in the Department of Commerce to help disseminate information throughout the state. Staff will also continue to look to environmental consultants for technical assistance in addition to that which is available from IDEM. If a future staff member was dedicated exclusively to an outreach/liason role, perhaps this person could be contracted to work in a capacity similar to that of a grant administrator working with communities on a one-on-one basis.

Questions from Kyle Hendrix: With regard to geographic distribution, has there been any thought to mirroring the current Brownfields program? What about making the percentage of the money available to smaller communities more than 60%? What about doing 100% grants, but requiring some level of matching funds from the community?

Answer: The point system in place for the current Brownfields program allows for the geographic distribution of funds and is something staff will look at when determining the scoring criteria for this new incentive. Staff has internally discussed a community match and what should be considered a match (especially in a small community). In discussing the idea of a cap, perhaps the community match could cover the cost overrun so as not to require a low interest loan to pay for the extra costs.

Petroleum Remediation Grant Incentive (Part Two) presentation by Calvin Kelly:

- **Site eligibility:**

  An abandoned site where the owners didn't pay the tank fees and sold it to the City for $1 doesn't qualify for this money because the site is eligible because the site wasn't transferred as part of an "arm's length" transaction.

  The term "innocent landowner" wasn't intended to be used as a legal term or definition, but rather a way to represent those sites that communities have where the current property owner didn't cause or contribute to the contamination on site. Concern was raised that the term "innocent landowner" be avoided and a new term considered.

  Comment from Tom Baker: The goal of this incentive is a No Further Action letter. Once a project is in the Program and working towards remediation, there likely won't be any/further IDEM enforcement action relating to civil penalties during/following remediation.

  Question raised by Mike Pitts: What about certain circumstances on a site where the tanks have been removed, but the end use is another service station? This could be an opportunity for a developing party to put in a new service station in a way that isn't competitive with the industry.

  Answer: If opening a new service station was the ultimate reuse, that new station would obviously become ELF eligible for any future environmental response activities that it would undertake. For the purposes of PRGI, perhaps there is a restriction that staff could put in the guidelines to somehow minimize a competitive disadvantage arising from such a scenario. Alternately, if someone decided to operate another service station there, maybe a portion of the grant would have to be paid back before it could operate.

  - **Site Ineligibility:**

  A site owner who can't pay the ELF deductible today is still considered ineligible for this money because he CAN obtain ELF eligibility. Also, PRGI funding cannot be used to pay the ELF deductible.

  Comment offered by John Mundell: Because there is a Phase I and II requirement to apply/receive PRGI funding, sites that can't meet the ELF deductible may not have to ability to pay for a Phase I and II. Conversely, if you can afford a Phase I and II, you could have also probably paid for your deductible as well. Maybe this incentive should have a deductible, or maybe the Phase I and II should be the deductible.

- **Applicant eligibility:**

If a City/Town/County hasn't addressed its own petroleum issues at a site where it actively contributed to the contamination (fleet maintenance facility, for example), it can't receive funding from this incentive. In the majority of these cases, the municipality would be considered a responsible party.

However, in the case of municipally-owned sites and others, petition scenarios were mentioned to account for the fact that there may be a site that doesn't fit the "mold of the usual sites." Staff recognizes that these sites deserve to be reviewed on a case-by-case basis following a petition for such a review.

- **Remediation activities and consultant involvement:**

A focus of the new PRGI will be to move the cleanup activities into a "Pay For Performance" (PFP) model. Calvin Kelly reviewed a presentation originally given by Bill Foskett (U.S. EPA – UST Office) during a PFP workshop during the 2001 National Brownfields Conference in Chicago. In summary, PFP will allow the State to specifically pay for reducing contamination at PRGI brownfield sites. This model is in contrast to the more conventional process of paying for time and materials used on a project, with – in some cases – the lesser likelihood of a complete cleanup. It was noted that Mr. Foskett's presentation did not contain all the specific details and components to a PFP initiative, but rather was a brief overview of the process. Specific details and some responses to today's comments about PFP will follow at subsequent meetings or during a meeting with consultants to specifically discuss this new business model.

Comment from Beth Grigsby: Some of her project costs aren't associated directly with the clean up, but with other administrative details. How will PFP account for that?

Comments from John Mundell: It will be a lot of work to implement this and it has a lot of insurance questions. How does PFP deal with soil clean up as opposed to groundwater cleanup? PFP might also scare away a lot of good consultants.

Comments by Andy Gremos: This idea really doesn't become a reality until a site is fully characterized. Some grant money should be used to perform a full characterization. Concerning a project cap, groundwater contamination is something that takes longer to clean up (and is more expensive) than soil contamination. Response: The $100K project cap originally proposed is a moot point because it was only connected with the 92 county distribution, which is no longer under consideration. The eventual cap will be a much larger number to account for groundwater sites. Consultants obviously want to know as much as possible about a site before making a bid;

there will in all cases be preliminary investigations to help narrow the "gap" between the known and unknown prior to a bid.

Comment from Karla McDonald: Reimbursement timeframes could be problematic if consultants are carrying costs for longer than necessary while waiting for payment, especially considering wait times for DOA processing, etc. Response: This incentive will have a payment process that avoids long wait times for payment; DOA is not involved as IDFA will be responsible for payment processing. A payment goal of between two and four weeks will be the goal.

Staff emphasized the point that there are going to be meetings with individuals running these programs in other states to get a break down of how their PFP programs are administered and how they deal with issues like groundwater contamination. These discussions will be shared during upcoming consultant meetings on this issue.

Staff also clarified that there have been no internal conversations about implementing PFP in other State programs.

- **<u>Other comments:</u>**

If a Phase II is incomplete or inaccurate, the contract relationship between the State and the consultant will likely move into a negotiation phase.

There is a big difference between a Phase II and a full site characterization. Alternately put, there is a big difference between typical due diligence and a full nature and extent investigation.

There will be potential difficulties with this model (PFP) due to the newness of RISC and the fact that RISC itself is an untested way of conducting business.

All of the sites funded by this incentive should end with a No Further Action letter. This does not mean that the site cannot receive a site status letter or a comfort letter. It also does not mean that the site cannot also go through the VRP.

- **<u>Adjournment:</u>**

The next meeting will be Friday, October 26, 2001. Staff is would like to hold a fourth meeting in late November that will summarize all of the discussion and decisions made to date.

Meeting adjourned at 12:30.